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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Home-to-work Transportation - Nuclear Regulatory  
Commission and Federal Home Loan Bank Board

File: B-210555.18, B-210555.20

Date: March 10, 1987

## DIGESTS

1. The proposal of the Nuclear Regulatory Commission (NRC) to permit NRC employees using Government vehicles for official travel to stop at their residences overnight prior to beginning or completing that travel is not legally objectionable. NRC offers convincing evidence that requiring employees to pick up and return cars to headquarters on the day travel begins or ends would cost the Government up to 4 hours of productive work time. This circumstance fits the new exception to the general home-to-work prohibition of 31 U.S.C. § 1344(b)(8) for "compelling operational considerations."

2. The use of Government vehicles for home-to-work transportation in a hypothetical situation raised by the Chairman of the Federal Home Loan Bank Board (FHLBB) to drive an employee to work on a day when official travel is to be performed later in the day is not authorized under the home-to-work transportation prohibition of 31 U.S.C. § 1344, nor does the situation fall within the new "compelling operational considerations" exception of 31 U.S.C. § 1344(b)(8). Authority in the Federal Travel Regulations (FTR) for taxicab transportation between home and work on days official travel is performed does not extend to transportation in Government vehicles, which is prohibited by statute. Moreover, no evidence showing a "compelling operational consideration" was offered. Exceptions to the home-to-work prohibition cannot be granted based solely on the comfort or convenience of the employee.

3. The Chairman of the Federal Home Loan Bank Board (FHLBB) is advised that there is no exception in the law for home-to-work transportation to and from a temporary duty location or meeting site. The home-to-work transportation prohibition applies to transportation between an employee's residence and any location where official business is to be performed. H.R. Rep. No. 451, 99th Cong., 1st Sess. 7 (1985).

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## DECISION

This decision is in response to separate requests from Mr. Victor Stello, Jr., Executive Director for Operations of the Nuclear Regulatory Commission (NRC), and from Mr. Edwin J. Gray, Chairman of the Federal Home Loan Bank Board (FHLBB). Because the requests are so closely related, we are responding with a single decision. Both requests involve the applicability of the home-to-work transportation prohibition, 31 U.S.C. § 1344, as amended by Pub. L. No. 99-550, October 27, 1986, to transportation of Federal employees to their residences in Government vehicles in connection with official travel duty. For the reasons discussed below, we think that in the circumstances described by Mr. Stello such use of Government vehicles would be permissible. However, in the circumstances described by Chairman Gray such use of Government vehicles is of doubtful propriety.

Please note that our opinion in this case is only advisory. Public Law 99-550 amended Section 1344 to provide in subsection (e) for the promulgation of regulations by the Administrator of General Services, to provide guidance and direction to the heads of Federal agencies in authorizing exceptions to the home-to-work prohibition under several subsections of the revised section 1344, including subsection (b)(8), the "compelling operational considerations" exception. Those regulations are to be promulgated no later than March 15, 1987. Our conclusions in this case are therefore subject to review and possible revision when those regulations become available.

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## BACKGROUND

NRC proposes to permit its employees to travel to their residences in Government vehicles the night before beginning official travel in those vehicles. Similarly, NRC proposes to permit employees returning from official travel in Government vehicles to stop with those vehicles at their residences overnight, prior to returning the vehicles to their duty stations the next morning. According to the NRC submission, such permission would be granted only in limited circumstances:

"Such use would only be authorized when an employee travels to licensees' facilities and other sites which are so located in relation to the employee's home and office that the overall cost to the Government will be minimized if the employee is authorized to drive a Government-furnished vehicle

from the NRC offices to his/her residence and then to the licensee site(s) and return. This authorization would be exercised only in those cases when travel orders have been issued and when a cost comparison of alternative modes of transportation has clearly demonstrated that use of a Government-furnished vehicle would be advantageous to the Government."

The NRC indicates that application of the general prohibition in 31 U.S.C. § 1344 on the use of Government vehicles for home-to-work transportation of employees in these circumstances would substantially increase the cost to the Government through the loss of productive work time or the possible need to use more expensive means of travel. In support of his position that such use of Government vehicles is proper, Mr. Stello refers to provisions in the Federal Travel Regulations (FTR) requiring the selection of the mode of travel most advantageous to the Government (FTR § 1-2.2b, FPMR 101-7, June 19, 1983) and a 1946 Comptroller General decision (25 Comp. Gen. 844 (1946)) which indicated that the use of Government vehicles was "a matter of administrative discretion."

Chairman Gray of the FHLBB raises for our consideration two hypothetical situations.<sup>1/</sup> The first involves the "transportation of a Government official between home and the office on a day when the official will depart from the office on official travel." The second situation involves "transportation from home directly to a meeting outside the office." In support of his belief that the first situation should constitute a proper use of Government vehicles, Chairman Gray refers to analogous authority in the FTR for taxicab transportation between residence and office on the day official travel is performed (FTR § 1-2.3d, FPMR 101-7, October 1, 1982), and the possible security and efficiency benefits of such transportation. Chairman Gray also concludes, based on a 1983 Department of Justice memorandum, that the second situation constitutes a proper use of Government vehicles.

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#### **TRAVEL REGULATIONS VS. HOME-TO-WORK PROHIBITION**

Since both the NRC and FHLBB spokesmen appear to rely primarily on the FTR to support their respective positions, a brief

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<sup>1/</sup> We note that the FHLBB is covered by the home-to-work transportation prohibition under section (a)(1) of Pub. L. No 99-550, October 27, 1986, which applies to funds "available to a Federal agency, by appropriation or otherwise."

discussion of the relative weight of each authority might be helpful.

The regulation cited by Mr. Stello permits the head of an agency or his delegee to authorize the use of a Government car for official travel if found to be most advantageous to the Government. It is thus entirely a "matter of administrative discretion," as we said in our 1946 decision, to send inspectors from the office to a licensee site (and back again) in a Government car rather than by public transportation, private car, or taxicab. However, the use of the Government car to take the inspectors to or from their homes and the licensee site is another matter. 31 U.S.C. § 1344 makes it quite clear that home-to-work transportation may not be considered to be "official business" unless the circumstances fit one of the narrow exceptions in the law.

Similarly, Chairman Gray may rely on the FTR to pay for a taxicab (or mileage, if the traveler uses his own car) from his home to his office when the employee will be leaving town later in the day on official travel. However, the FTR does not authorize the use of a Government car to drive the employee to the office because that mode of transportation is prohibited by the statute as not constituting official travel, unless otherwise permitted under one of the statutory exceptions.

It should be noted that nowhere in the FTR is home-to-work transportation in a Government car authorized, nor should the regulations be so construed. A statutory requirement or restriction takes precedence over an administrative regulation. For this reason, we have examined the questions raised by Mr. Stello and Chairman Gray in the light of the statute and its limited exceptions rather than under the FTR sections on which they rely.

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#### **"OPERATIONAL CONSIDERATIONS"**

The use of Government vehicles for the transportation of Government officers and employees between their residences and duty locations is generally prohibited by 31 U.S.C. § 1344. We have held that under section 1344, unless one of certain narrow exceptions applies, "agencies may not properly exercise administrative discretion to provide home-to-work transportation to their officers and employees, unless otherwise provided by statute." 62 Comp. Gen. 438, 447 (1983).

Section 1344, however, was recently revised. Pub L. No. 99-550, October 27, 1986. The revised section 1344 includes in subsection (b)(8) authority for home-to-work transportation when the head of the agency determines that there are "compelling operational considerations" which "make such transportation essential to the conduct of official business."

In our view, the "compelling operational considerations" required by subsection (b)(8) need not be of the degree previously required by this Office for home-to-work transportation in emergency circumstances. See 54 Comp. Gen. 1066 (1975) (transportation of essential Social Security Administration employees during a transit strike necessary to ensure processing of benefit payments). In an early version of H.R. 3614, the bill which was ultimately enacted as Public Law 99-550, the "operational considerations" language read as follows:

"an officer or employee with regard to whom the head of an executive agency makes a determination, which shall be effective for no longer than 15 calendar days, that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other similarly compelling operational considerations make such transportation essential to the conduct of official business."  
(Emphasis added.)

H.R. 3614, 99th Cong., 2d Sess., § (b)(7), 132 Cong. Rec. H779 (daily ed. March 4, 1986). The House report accompanying H.R. 3614 explained the "operational considerations" language as follows:

"As used in subsection (b)(7), 'similarly compelling operational considerations' imparts a circumstance with an element of gravity or importance that is comparable to the gravity or importance associated with a clear and present danger or an emergency situation. In such instances, the Committee expects that home-to-work transportation would be provided only for those employees who are essential to the operation of the government. An employee's irregular hours will not be considered as a justification for the authorization of home-to-work transportation in a government vehicle."

H.R. Rep. No. 451, 99th Cong., 1st Sess. 9 (1985). Accordingly, at the time H.R. 3614 was originally considered and passed by the House, it is clear that the "operational

considerations" language was applicable only in the most stringent circumstances.

When H.R. 3614 was considered in the Senate, the "operational considerations" language was amended. Among the changes was the deletion of the word "similarly" before the phrase "compelling operational considerations." H.R. 3614, § (b)(8), 99th Cong., 2d Sess., 132 Cong. Rec. S15865-66 (daily ed. October 10, 1986). There was no explanation for the change in the available legislative materials. In our view, however, this deliberate change in wording indicates an understanding on the part of Congress that "compelling operational considerations" would not necessarily be similar in magnitude to a "clear and present danger" or an "emergency." It is a common rule of statutory construction that adoption of an amendment is evidence that the legislature intends to change the provisions of the original law. 2A Sutherland, Statutory Construction, § 48.18 (4th ed. 1984). Here, the evident intent of the Senate amendment, which was accepted by the House, was to broaden the narrow scope of the "operational considerations" exception as passed by the House.

Accordingly, we conclude that the "compelling operational considerations" exception to the general home-to-work prohibition of 31 U.S.C. § 1344 need not be construed to include only emergency or life and death situations. The use of a Government car may be justifiable if other available alternatives would involve substantial additional costs to the Government or expenditures of employee time.

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#### NRC

Although at first blush, the hypothetical situations raised by the NRC and the FHLBB seem quite similar, there is an important difference. In the NRC situation, the Government car itself has been authorized as the most efficient means of transporting employees to the licensee site where they are to perform official duties. As Mr. Stello points out, without the authority he seeks:

"[a] region-based NRC inspector is required to go from home to the regional office in the morning to pick up the Government vehicle, often traveling the same route (in an opposite direction) to the licensee site that he travelled from his residence to reach the regional office. Further, the return travel must be planned so the inspector can return the Government vehicle to the regional office

during the normal office hours. On the return trip the inspector must leave the licensee site earlier, travel farther, and use more time to return the vehicle to the regional office than if the inspector proceeded directly to his/her residence and returned the vehicle the next morning to the regional office."

Mr. Stello estimates that typical round-trip costs to the NRC for each inspection would involve an additional 1/2 day of staff time--even more time if scheduled activities or meetings at the licensee site do not allow the employee enough time to pick up or return the car during normal working hours. We think that the NRC has made a convincing demonstration that the failure to permit home-to-work transportation in Government vehicles in the situation described would result in substantial added transportation cost to the Government, as well as operational inefficiency and loss of productive work time. There is no evident reasonable alternative available to NRC. The transportation in question is not for the comfort or convenience of the employees involved, but rather is necessary for the efficient operation of the agency.

Further, although the (FTR) are silent about the authority of Government employees using Government vehicles for official travel to stop at their residences before beginning or after completing that travel, we think that there is substantial support for such authority in the FTR. Federal agencies are required to select the method of transportation "which will result in the greatest advantage to the Government," and to consider "lost work time" in that selection. FTR § 1-2.2b, FPMR 101-7, June 19, 1983. Under this standard, the use of a Government vehicle would be a proper choice much less frequently were employees always required to leave for a temporary duty site and return to their designated work place directly. This would defeat the evident purpose of the FTR to permit the use of Government vehicles in all appropriate circumstances and to ensure that the mode of transportation most advantageous to the Government is used for official travel.

Accordingly, if the Chairman of the NRC makes the requisite determination of a "compelling operational consideration" under subsection (b)(8) of section 1344, this Office would have no objection to the use of Government vehicles for the home-to-work transportation of employees in the circumstances described in the NRC submission in this case. We call to NRC's attention, however, that subsection (d)(4) of the

revised section 1344 requires that the head of each agency authorizing home-to-work transportation under subsection (b)(8) notify designated congressional committees.

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**FHLBB.**

The first hypothetical situation posed by Chairman Gray of the FHLBB concerns the use of a Government automobile to transport an official from his home to his headquarters office when the official will be leaving on official travel later in the day--presumably by public carrier. Mr. Gray mentions an opinion provided by then Assistant Attorney General Theodore B. Olson, dated June 10, 1983, which advised that section 1344 of title 31, United States Code, "probably does prohibit the use of a government automobile" in this kind of situation.

Mr. Gray complains that Mr. Olson's opinion fails to take into account FTR § 1-2.3d, FPMR 101-7, October 1, 1982, which permits reimbursement for taxicab fares between home and work on the day official travel begins or ends. Although Mr. Gray asserts that the same rationale "applies equally to the use of a government automobile in the same situation," we must point out that in promulgating the travel regulation in question, the GSA was not facing a specific statutory prohibition. (31 U.S.C. § 1344 did not then nor does it now deal with the use of taxicabs or other public transportation). Neither the GSA nor this Office would be justified in approving such an expansion of the taxicab reimbursement provision in view of the clear language of section 1344, discussed above.

Mr. Gray adds that:

"Moreover, the use of telephone equipped federal vehicles would enable senior federal officials to conduct government business regarding matters of sensitivity or confidentiality. Further, permitting officials to use government automobiles would prove to be cost effective and beneficial to the government by eliminating the uncertainty that accompanies reliance on taxicabs or limousines."

We are unable to find that either of the above justifications constitutes a "compelling operational consideration" within any reasonable interpretation of the phrase. There is nothing in the FHLBB's submission that suggests that the Chairman

would only authorize the use of a Government car for "senior federal officials" who require telephone equipment to conduct "matters of sensitivity or confidentiality" on their way to or from the office. The second justification-- elimination of "the uncertainty that accompanies reliance on taxicabs or limousines"--does not, without more, support the Chairman's statement that the use of a Government car instead of a taxicab "would prove to be cost effective." Section (d)(3) of revised section 1344 provides that determinations to provide home-to-work transportation may not "be made solely or principally for the comfort or convenience of the officer or employee." Except for the convenience of the official to be transported in Chairman Gray's hypothetical situation, there is no evident compelling advantage of transportation in a Government vehicle.

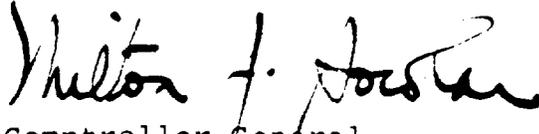
The second hypothetical situation presented by Chairman Gray concerns "the use of government vehicles to transport officials from home directly to an official meeting outside of the office, particularly before normal business hours." We must point out that there is no exception in the law for home-to-work transportation to or from a temporary duty location. The fact that an employee's destination may be an official meeting, rather than his regular work place, does not bring that transportation within one of the other exceptions to the general home-to-work transportation prohibition. It has been the long-standing position of this Office that each Federal employee bears the responsibility for his own transportation to the site where his work is to begin. B-210555.3, February 7, 1984. The House report on H.R. 3614, (the bill which was later enacted as Public Law 99-550, which amended 31 U.S.C. § 1344) indicates this clearly:

"'Place of employment' means the primary place where an officer or employee performs his or her business, trade, or occupation, and includes, but is not limited to, an official duty station, home base, or headquarters. It includes any place where an employee is assigned to work. This legislation covers transportation to such a site that is not covered by statutes dealing with the provision of travel benefits to officers or employees of the government." (Emphasis added.)

H.R. Rep. No. 451, 99th Cong., 1st Sess. 7 (1985).

In summary, we conclude that the use of Government vehicles for home-to-work transportation in the circumstances

described in the NRC submission, involving home-to-work transportation of Government employees either beginning or ending overnight official travel in the vehicle in question, would be authorized. We conclude, however, that the use of Government vehicles for home-to-work transportation in the hypothetical situations raised by the FHLBB, involving home-to-work transportation on a day when official travel is to be performed later in the day by public carrier, and home-to-work transportation to meetings or other temporary duty sites, would not be authorized.

*for*   
Comptroller General  
of the United States